

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALPHA CAPITAL ANSTALT,

Plaintiff,

-against-

HIGH PERFORMANCE BEVERAGE COMPANY,

Defendant.

Index No. 639/2015(CM)

**PLAINTIFFS' STATEMENT
OF UNDISPUTED
MATERIAL FACTS
PURSUANT TO LOCAL
CIVIL RULE 56.1**

1. On August 26, 2014, High Performance Beverage Company ("TBEV"), Tonaquint, Inc. ("Tonaquint"), and Alpha Capital Anstalt ("Alpha" or "Plaintiff") entered into a note purchase agreement (the "NPA"). Affirmation of Michael Holley, president of defendant High Performance Beverage Company dated September 11, 2014 (hereinafter "Holley Affirmation") ¶ 2.

2. Pursuant to the NPA, the Plaintiff purchased from Tonaquint a \$62,234.24 principal amount portion of a note originally issued by the Defendant to Tonaquint on October 2, 2013. Holley Affirmation ¶ 3.

3. Pursuant to the NPA the Defendant issued to Alpha a new note dated August 26, 2014 in the principal amount of \$62,234.24 (the "2013 Note"). Holley Affirmation ¶ 4.

4. A true copy of the 2013 Note is attached as Exhibit A to the Complaint. Holley Affirmation ¶ 4.

5. On August 27, 2014, TBEV and Plaintiff entered into a securities purchase agreement (the "SPA"). Holley Affirmation ¶ 5.

6. A true copy of the SPA is attached as Exhibit B to the Complaint. Holley Affirmation ¶ 5.

7. Pursuant to the SPA, the Plaintiff purchased from Defendant for \$150,000 an original issue discount note in the principal amount of \$160,000 (the “2014 Note” and together with the 2013 Note, the “Notes”). Holley Affirmation ¶ 6.

8. A true copy of the 2014 Note is attached as Exhibit C to the Complaint. Holley Affirmation ¶ 6.

9. Both the Notes are convertible into shares of the Defendant’s common stock and contained material provision to enable the Plaintiff to sell any share it acquires upon conversion of the Notes. Holley Affirmation ¶ 7.

10. Defendant failed to make any payment on the 2013 Note. Holley Affirmation ¶ 9.

11. Defendant failed to make any payment on the 2014 Note. Holley Affirmation ¶ 10.

12. On November 20, 2014, Plaintiff submitted another notice of conversion (the “November Conversion Notice”), converting \$17,592.12 of the 2013 Note into 104,715,000 shares of the TBEV’s common stock (the “November Conversion Shares”). Holley Affirmation ¶ 11.


13. The Defendant failed to honor the November Conversion Notice. Holley Affirmation ¶ 12.

14. The Defendant did not deliver the November Conversion Shares. Holley Affirmation ¶ 12.

15. Defendant ceased to be DTC eligible. Holley Affirmation ¶ 13.

Dated: October 27, 2015
Valley Stream, New York

Respectfully submitted,

By: 
Eliezer Drew (ED0625)
Attorney for Defendants
551 Fifth Avenue, Suite 1601
New York, New York 10176
(212) 697-9500